IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

CITY OF TUCSON, A MUNICIPAL CORPORATION,
Plaintiff/Appellee,

v.

ROYAL ORCHID CORPORATION, AN ARIZONA CORPORATION,
Defendant/Appellant.

No. 2 CA-CV 2022-0037
Filed May 19, 2023

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
No. C20201362
The Honorable Michael Butler, Judge

AFFIRMED

COUNSEL

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Plaintiff/Appellee

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Defendant/Appellant

MEMORANDUM DECISION

Judge O'Neil authored the decision of the Court, in which Presiding Judge Staring and Judge Sklar concurred.

O' N E I L, Judge:

¶1 In this eminent domain case, Royal Orchid appeals from a final judgment awarding $1,569,720 as just compensation for real property condemned by the City of Tucson, arguing the trial court erred by denying leave to amend its answer, finding public use and necessity for the taking of its property, and ruling improperly on several motions in limine. For the reasons outlined below, we affirm.

BACKGROUND

¶2 In November 2015, the city passed a resolution to "negotiate for and acquire certain rights of way and easements which are necessary for the Grant Road-Palo Verde Avenue to Venice Place Improvement Project." The resolution identified an expanded right of way for Grant Road that would encroach into Royal Orchid's property and eliminate a significant portion of its parking lot. In March 2020, the city filed an eminent domain complaint and an application for immediate possession of the entire Royal Orchid property to accommodate the expanded right of way. The parties stipulated "that the property . . . is being taken for a public use; that the taking is necessary for such use; and that the City may be let into immediate possession" upon posting a cash bond of $1,353,000. On that basis, the trial court entered an order for immediate possession pursuant to A.R.S. § 12-1116. The city posted the bond, and the parties stipulated to release the bond to Royal Orchid.

¶3 Royal Orchid then filed an answer to the complaint. Consistent with the earlier stipulation, it admitted allegations that the city's acquisition of the property was "necessary" and for "a public use authorized by law." It further asked that the court determine the value of the condemned property and enter judgment "for just compensation."

¶4 After the close of discovery, the city filed several motions in limine, including motions to exclude certain evidence of "comparable sales" and to bar reference to anything other than fair market value in determining just compensation for the property, specifically including "use value" or "condemnation blight." The trial court granted several of these

motions, limiting Royal Orchid from advancing certain legal theories on the issue of valuation. A pretrial status conference was set for December 3, 2021, and trial was set for December 7.

¶5 On November 29, Royal Orchid filed an amended answer, without leave of court or consent from the city, denying the allegations of necessity and public use it had previously admitted. It also filed a motion to dismiss the complaint, for the first time urging the trial court to make "independent findings" on public use and necessity and arguing dismissal was required, relying on a purported lack of disclosure and Rule 37(d), Ariz. R. Civ. P., as the sole legal basis for dismissal. At the conference on December 3, the court reset the trial date to January 4, 2022, due to a scheduling conflict. On December 29, after the court had denied the motion to dismiss and granted the city's motion to strike the amended answer based on Royal Orchid's failure to comply with Rule 15, Ariz. R. Civ. P., Royal Orchid filed a motion for leave to amend or supplement its answer to dispute the city's right to take possession of the property. The court denied the motion.

¶6 After a jury trial on the sole issue of the property's value, Royal Orchid was awarded $1,569,720 as just compensation. This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

DISCUSSION

¶7 Royal Orchid identifies several issues for review on appeal. First, Royal Orchid contends the trial court improperly denied its motion to amend its answer and relied upon its stipulation for immediate possession in determining that the taking was necessary for an authorized public use. Second, Royal Orchid asserts that the court improperly granted dispositive relief through its rulings on the city's motions in limine. Third, Royal Orchid argues the court improperly precluded its theory of just compensation based on "use value." Though the remaining issues are less clearly identified, Royal Orchid also challenges other rulings on pretrial motions in limine.

¶8 The opening brief does not contain, "[f]or each contention, references to the record on appeal where the particular issue was raised and ruled on, and the applicable standard of appellate review with citation to supporting legal authority." Ariz. R. Civ. App. P. 13(a)(7)(B). Royal Orchid adopts a species of the "'kitchen sink' approach to appellate advocacy" that our supreme court has discouraged. *State v. Huerstel*, 206 Ariz. 93, n.1 (2003) (quoting *State v. Bolton*, 182 Ariz. 290, 299 (1995)). Under each heading, the opening brief raises a variety of disconnected arguments, sometimes

without identifying any specific issue that was raised and ruled on by the trial court. Other issues are mentioned in passing, without development or citation to authority. *See* Ariz. R. Civ. App. P. 13(a)(7)(A) (requiring arguments be supported with "citations of legal authorities and appropriate references" to the record). This failure to comply with our rules justifies our deeming noncompliant arguments waived altogether. *See Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) (arguments not developed on appeal deemed waived). However, to the extent that the opening brief fairly presents issues in a fashion that has afforded the city a meaningful opportunity to respond, we exercise our discretion to address the arguments Royal Orchid identifies and adequately supports. *See Adams v. Valley Nat'l Bank of Ariz.*, 139 Ariz. 340, 342 (App. 1984) (appellate court prefers to resolve issues on merits).

The City's Power to Take the Property

¶9 Relying on article II, § 17 of the Arizona Constitution and A.R.S. § 12-1112, Royal Orchid generally contends the trial court erred by finding that the taking was necessary for an authorized public use. The opening brief is ambiguous concerning the particular ruling challenged on appeal and fails to identify the applicable standard of appellate review. But the court meaningfully addressed this issue when it denied Royal Orchid's motion for leave to amend its answer, and we therefore address it in that context.[1]

¶10 Royal Orchid asserts the trial court improperly relied upon the stipulation and order for immediate possession in denying leave to amend its answer. While motions to amend pleadings are liberally granted, Ariz. R. Civ. P. 15(a)(2), "denial of a motion to amend is left to the trial court's sound discretion and will not be disturbed absent a showing of an

[1]Royal Orchid's motion to dismiss raised many of the same issues relevant to its motion to amend, but the sole asserted legal basis for dismissal was as a sanction under Rule 37(d), Ariz. R. Civ. P., for claimed violations of the city's disclosure obligations under Rule 26.1, Ariz. R. Civ. P. The opening brief asserts that the trial court's "entire ruling" on the motion to dismiss "is in error," but Royal Orchid does not develop an argument or cite authority to show that any purported disclosure violations warranted dismissal, much less that the court abused its discretion. This failure to develop an argument waives the issue for appeal. *See Ritchie*, 221 Ariz. 288, ¶ 62 (appellant waives claims by failing to provide in opening brief significant arguments, supporting authority, and citations to record). Any other potential grounds for relief alluded to in the motion to dismiss are similarly undeveloped and therefore waived on appeal. *Id.*

abuse of such discretion," *Haynes v. Syntek Fin. Corp.*, 184 Ariz. 332, 336 (App. 1995). Royal Orchid initially filed its amended answer without leave of court and without otherwise complying with the requirements of Rule 15(a). Thus, the court could properly have granted the city's motion to strike the amended complaint based solely on Royal Orchid's failure to comply with the rule. *See Carranza v. Madrigal*, 237 Ariz. 512, ¶ 12 (2015).

¶11 Ultimately, though, Royal Orchid complied with Rule 15(a) by filing a motion for leave to amend or supplement its answer. A trial court may deny an amendment when there is "'undue' delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments[,] or undue prejudice to the opposing party." *Haynes*, 184 Ariz. at 336 (alteration in *Haynes*) (quoting *Owen v. Superior Court*, 133 Ariz. 75, 79 (1982)). An amendment causes prejudice when it "raises new issues or inserts new parties into the litigation," *id.* (quoting *Owen*, 133 Ariz. at 79), and the court may deny leave to amend "when the amendment comes late and raises new issues requiring preparation for factual discovery which would not otherwise have been necessitated nor expected, thus requiring delay in the decision of the case," *id.* (quoting *Owen*, 133 Ariz. at 81).

¶12 Royal Orchid has shown no abuse of discretion here. Nineteen months after Royal Orchid filed its answer, the proposed amendment would have altered the entire substance of the trial no more than six days before it began, inserting new issues requiring otherwise unnecessary discovery and preparation after the discovery deadlines were closed. *See Owen*, 133 Ariz. at 79-81 (affirming denial of amendment that came late and raised new issues requiring factual discovery, not merely a new legal theory); *see also Contractor & Mining Serv. & Supply, Inc. v. H & M Tractor & Bearing Corp.*, 4 Ariz. App. 29, 33 (1966) (affirming denial of amendment after the pretrial order was issued and discovery closed); *Gulf Homes, Inc. v. Goubeaux*, 136 Ariz. 33, 38 (1983) (affirming denial of amendment argued three days before the matter was set for trial).

¶13 Royal Orchid, however, asserts that it could not reasonably have amended or supplemented its answer earlier because it did not learn the basis for amendment until weeks before trial. As it did in various related pleadings before the trial court, Royal Orchid argues that its late motion to amend or supplement was warranted by the following circumstances: 1) that the original legislative resolution did not authorize taking Royal Orchid's entire property, 2) that the city no longer intended to demolish structures on the property or eliminate access from Grant Road, and 3) that the city had leased the property to a private entity.

Legislative Authorization to Take the Property

¶14 Royal Orchid does not explain why it could not have sooner learned the contents of the resolution through the exercise of due diligence. The resolution authorized the city's agents to "acquire certain rights of way and easements," and included a map illustrating an expansion of the Grant Road right of way into some, but not all, of Royal Orchid's property. Royal Orchid could have challenged the necessity of taking its entire property to accommodate the right of way described in the resolution, but instead admitted that the taking was necessary for a public use authorized by law. The resolution was publicly available and referenced in correspondence to Royal Orchid before litigation began.

¶15 Royal Orchid also cites *City of Phoenix v. Harnish* for the proposition that a municipality "will not be allowed to take the lands of another unless such right comes *clearly and unmistakably* within the limits of the authority granted," 214 Ariz. 158, ¶ 13 (App. 2006) (emphasis in original). It argues that the city had no authority to take property beyond the limits of the expanded right of way as illustrated on the map.[2] *Harnish*, however, expressly addressed the limits of eminent domain power delegated to municipalities by the state legislature. *Id.* ¶ 12. "Political subdivisions of the State, including municipalities, do not have inherent powers of eminent domain and may only exercise those powers that are statutorily delegated to them." *Id.* The question in *Harnish* was not whether a municipal resolution properly exercised the authority granted by state law, but whether state law granted such authority in the first place. *Id.* ¶ 10. Royal Orchid concedes the city's "authority to take land for road projects." The rationale in *Harnish* does not apply.

Subsequent Changes to Project Plans

¶16 The record does not support Royal Orchid's contention that the city's plans for the Grant Road project materially changed. Royal

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[2]Royal Orchid also asserts the trial court lacked jurisdiction outside the "mapped authorization area," but cites no authority to suggest that the jurisdiction of the Superior Court of Arizona to hear an eminent domain action is dependent upon municipal authorization. *See* Ariz. Const. art. VI § 14 (defining the superior court's jurisdiction); § 12-1116(A) ("All actions for condemnation shall be brought as other civil actions in the superior court in the county in which the property is located . . . ."). We therefore deem this claim waived. *See Ritchie*, 221 Ariz. 288, ¶ 62; *see also Boswell v. Fintelmann*, 242 Ariz. 52, n.3 (App. 2017) (appellant who "fails to develop and support his conclusory arguments . . . waives them").

Orchid asserts that the city made "repeated untrue avowals" that the project would eliminate access to the property from Grant Road and that the city's stated intent to demolish at least some structures on the property was "revealed as untrue weeks before trial," but cites no support for these assertions in the record. For the first time in its reply brief, Royal Orchid cites a map of "preliminary plans" showing a driveway on the property that was not present in previous plans. Royal Orchid does not dispute that the plans in effect at the time of its stipulation and answer did not include a driveway. These apparently amended plans were disclosed no later than June 2020, approximately a year and seven months before trial, and Royal Orchid does not explain why the existence of a driveway would have altered the necessity of the condemnation or its public purpose. Regardless, this argument was not raised before the trial court and is therefore waived. *See Winters v. Ariz. Bd. of Educ.*, 207 Ariz. 173, ¶ 13 (App. 2004).

¶17 Nor does Royal Orchid cite any authority or develop its argument that a subsequent change in the particular plans for property access or demolition would have altered the public purpose or the necessity of the taking. This failure to cite relevant portions of the record or supporting legal authority waives the argument. *See* Ariz. R. Civ. App. P. 13(a)(7)(A); *Ritchie*, 221 Ariz. 288, ¶ 62 (failure to provide citations to authorities, statutes, and parts of the record relied on "can constitute abandonment and waiver" of claim). Even absent waiver, although a subsequent change of plans may give rise to a cause of action for any additional resultant damages, the change would not entitle Royal Orchid to retake possession "absent a showing of bad faith at the time of the taking." *De Alfy Props. v. Pima County*, 195 Ariz. 37, ¶ 9 (App. 1998) (quoting *Mainer v. Canal Auth.*, 467 So. 2d 989, 992 (Fla. 1985)).

¶18 In addition, the record supports the trial court's conclusion that nothing had materially altered the plans for a "new placement of the roadway [that] will prohibit commercial egress from the [p]roperty." The city attached a detailed map to its complaint, illustrating the plans to expand the right of way for Grant Road well into Royal Orchid's parking lot. Royal Orchid was on notice of those plans, including the boundaries of the intended right of way and the extent of its intrusion into the property, before filing its answer. In its pleadings before the trial court, Royal Orchid cited a subsequent news article reporting that a private entity had entered into "a year-to-year lease with the City of Tucson for the building." But the same article also noted that the Grant Road widening project would "continue[] to gobble up property and buildings along the thoroughfare," causing the Royal Orchid property to "lose its single-story attachment buildings to the west, along with much of its front parking lot."

Interim Lease to Private Entity

¶19 Finally, the city leasing the property to a private entity did not alter the public purpose of the taking. Royal Orchid does not dispute that the expansion of Grant Road is a public purpose, but argues that the lease serves no public use. Where property is taken for a public use, however, "[t]he mere fact that the property will be leased to a private corporation or individual does not invalidate the condemnation." *See Cordova v. City of Tucson*, 16 Ariz. App. 447, 449 (1972) (applying statute concerning municipal redevelopment projects). Further, "[t]he public purpose for which land is acquired by the exercise of eminent domain is not affected by subsequent conveyance or lease of the same." *City of Phoenix v. Phx. Civic Auditorium & Convention Ctr. Ass'n*, 99 Ariz. 270, 277-78 (1965).

¶20 Here, Royal Orchid demonstrated no more than an interim lease of the property to a private entity. The city retains control of the property, and its purpose to expand Grant Road remains unchanged. Having taken the property for a public use, the city was not required to leave it vacant, idle, and wasting away until construction on the road expansion project began. *Cf. Beistline v. City of San Diego*, 256 F.2d 421, 424 (9th Cir. 1958) ("Because a sovereign body plans to acquire private property for a lawful purpose . . . , does acquire the property with such purpose, and thereafter changes its corporate mind and uses the property for a different purpose, . . . does not thereby establish a taking for private use . . . ."); *Reichelderfer v. Quinn*, 287 U.S. 315, 320 (1932) ("when lands are acquired by a governmental body in fee and dedicated by statute to park purposes, it is within the legislative power to change the use"). Where the purpose of a taking is for public use, its interim lease to a private party does not alter that public purpose. *Cf. Phx. Civic Auditorium & Convention Ctr. Ass'n*, 99 Ariz. at 277-78.

Effect of Denying Leave to Amend

¶21 Based on the trial court's denial of the motion to amend, which we do not disturb, trial was properly limited to the question of just compensation. Royal Orchid's answer expressly admitted that the taking was authorized by law and necessary for public use, and Royal Orchid was bound by that admission.[3] *See, e.g.*, *Schwartz v. Schwerin*, 85 Ariz. 242, 249

[3]Royal Orchid suggests, but does not develop, a theory that its admissions were not binding because the answer requested that the trial court enter an award for just compensation "*if* the [trial c]ourt should find" the taking necessary for an authorized public use. (Emphasis added.) But the answer specifically admitted the allegation in the complaint that the

(1959) ("an admission in an answer is binding on the party making it, and is conclusive as to the admitted fact"). We therefore need not consider whether Royal Orchid was bound by its stipulation to those same facts in connection with the order for immediate possession in light of § 12-1116(O). Nor need we address whether Royal Orchid waived or abandoned its defense to possession pursuant to A.R.S. § 12-1127(B) or was otherwise estopped from disputing possession after accepting disbursement of the $1,353,000 bond the city had posted with the court.

¶22 Royal Orchid's opening brief either raises or alludes to other claimed errors. Most notably, it argues that the trial court erred by failing to conduct an "independent analysis of public use." As we have explained, Royal Orchid admitted public use in its answer and was bound by that admission. The final judgment included the court's finding that the taking was "necessary for a public use," which was supported by the binding admissions contained in Royal Orchid's answer. The judgment did not rely on any legislative determination. This satisfied the constitutional requirement that public use be a judicial question. Ariz. Const. art. II, § 17; *cf. Bailey v. Myers*, 206 Ariz. 224, ¶¶ 7, 14 (App. 2003) (finding a trial court failed to conduct the constitutionally required independent analysis of public use where the defendant disputed public use and, after an evidentiary hearing, the trial court apparently deferred to a legislative declaration of public use).

¶23 The opening brief also asserts the trial court erred by "transfer[ring the] property . . . before the right to take is resolved by appeal." The only authority cited for this proposition is § 12-1127, which by its own terms applies "after judgment is entered" and governs only the possession of property pending appeal, without reference to transfer of title. On this issue, however, Royal Orchid includes no citations to the record and fails to identify the ruling challenged on appeal or any standard of appellate review with citation to authority. We deem the argument waived. *See Ritchie*, 221 Ariz. 288, ¶ 62. Any other issues raised or alluded to in the brief under this heading are similarly waived. *See id.*

Treatment of Motions in Limine

¶24 Royal Orchid next argues the trial court improperly granted dispositive relief in violation of Rule 56, Ariz. R. Civ. P., by granting the

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condemnation was for "a public use authorized by law, and the taking [was] necessary for that public use." We deem this argument waived. *See Ritchie*, 221 Ariz. 288, ¶ 62.

city's motions in limine.[4] Royal Orchid relies on an extra-jurisdictional case in which a federal district court determined that the plaintiff's motion in limine was effectively "an improper and untimely motion for summary judgment." *Gold Cross Ems, Inc. v. Child.'s Hosp. of Ala.*, 309 F.R.D. 699, 700-02 (S.D. Ga. 2015). But Royal Orchid does not identify from the record where its Rule 56 argument was raised before the trial court as to any of the various motions in limine and does not identify which of the court's rulings disposed of a claim or defense. Instead, Royal Orchid broadly asserts that the effect of the court's rulings "precluded [Royal Orchid] from seeking just compensation based on the actual uses of the Property [and] the blight created by the City's conduct." But Royal Orchid has offered no authority to establish that its alternative theories of just compensation, which were the subjects of the motions in limine, were claims or defenses. We therefore deem this argument waived. *See* Ariz. R. Civ. App. P. 13(a)(7) (argument must contain citations to legal authority and references to the record); *Ritchie*, 221 Ariz. 288, ¶ 62.

¶25 Even absent waiver, the argument raised here does not substantially differ from the argument we rejected in *City of Tucson v. Tanno*, 245 Ariz. 488 (App. 2018). As in *Tanno*, "[t]he trial court's rulings did not preclude [Royal Orchid] from pursuing [its] claim, which ultimately resulted in a monetary judgment in [its] favor." *See id*. ¶ 25. The rulings "involved 'disputed evidentiary issue[s],'" *id.* (alteration in *Tanno*) (quoting Ariz. R. Civ. P. 7.2(a)), and "limited the evidence that could be introduced in support of the claim," *id.* Motions in limine are the proper tool to resolve such disputes. *Id.*

Rulings on Motions in Limine[5]

¶26 Insofar as Royal Orchid also challenges the merits of the trial court's rulings on the city's motions in limine, we review them for an abuse

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[4]In the course of its argument, Royal Orchid alludes to a separate argument that the trial court's rulings violated the "law of the case" by contradicting a prior ruling. Even if this were true, the law of the case is a procedural rule that "does not deprive a judge of the power to change his or her own nonfinal rulings or the nonfinal rulings of another judge of that same court sitting on the same case." *Davis v. Davis*, 195 Ariz. 158, ¶ 14 (App. 1999). The opening brief does not develop this argument, however, and we decline to consider it further. *See Ritchie*, 221 Ariz. 288, ¶ 62.

[5]Royal Orchird devotes a portion of its brief to criticizing the methodology adopted by the city's valuation expert. Although it frames this as a legal argument, it is an improper request that we reweigh the

of discretion. *See Warner v. Sw. Desert Images, LLC*, 218 Ariz. 121, ¶ 33 (App. 2008). A court has discretion to preclude evidence if its probative value is substantially outweighed by danger of wasting time, confusing the issues, or misleading the jury. *Tanno*, 245 Ariz. 488, ¶ 17; Ariz. R. Evid. 403.

Use Value

¶27 Royal Orchid argues that the trial court erred in precluding evidence of the property's "'use' value" for the purpose of determining just compensation. Royal Orchid advanced, and the court precluded, a theory of just compensation based on the costs Royal Orchid had actually expended for its new property and the additional accommodations necessary to equal the function and utility of the condemned property for Royal Orchid's needs.

¶28 In a condemnation action, "[j]ust compensation equals the fair market value of the property." *Salt River Project Agric. Improvement & Power Dist. v. Miller Park, L.L.C.*, 218 Ariz. 246, ¶ 11 (2008). Fair market value is "the most probable price . . . that the property would bring if exposed for sale in the open market, with reasonable time allowed in which to find a purchaser, buying with knowledge of all of the uses and purposes to which it was adapted and for which it was capable." A.R.S. § 12-1122(C). This definition of fair market value assumes "a 'mythical' buyer who is deemed to be aware of all factors which affect the value of the land in relation to its highest and best use." *Selective Res. v. Superior Court*, 145 Ariz. 151, 154 (App. 1984).

¶29 In estimating the fair market value of property, "[t]here are three different appraisal methodologies commonly used by appraisers: the sales comparison approach, the cost approach, and the income approach." *State ex rel. Miller v. Wells Fargo Bank of Ariz., N.A.*, 194 Ariz. 126, ¶ 24 (App. 1998). The sales comparison approach is used most frequently and is "arguably the preferred method." *Maricopa County v. Barkley*, 168 Ariz. 234, 241 (App. 1990). Other methods may be appropriate "depending on the circumstances," but "only when meaningfully comparable sales are not readily available." *Pima County v. Gonzalez*, 193 Ariz. 18, ¶ 8 (App. 1998). At trial, Royal Orchid's expert referred to the sales comparison approach but relied primarily on the cost method, which firsts determines the cost to reproduce the condemned property new and then adjusts for depreciation. *City of Phoenix v. Consol. Water Co.*, 101 Ariz. 43, 47 (1966). Using this

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evidence. We will not do so. *See Lehn v. Al-Thanayyan*, 246 Ariz. 277, ¶ 20 (App. 2019); *see also* A.R.S. § 12-2102(C) (appellate court will not consider sufficiency of evidence unless appellant sought new trial below).

method, the expert estimated the market value of the condemned property was $2,348,600.

¶30 The trial court precluded Royal Orchid's expert from presenting an alternative theory that would have estimated the market value at $2,200,000. Under this theory, Royal Orchid's expert would have begun with the real-world price of $1,225,000 that Royal Orchid paid for a smaller replacement property that lacked storage. Because Royal Orchid compensated for the lack of onsite storage by leasing a storage facility nearby, the expert would then have added capitalized storage expenses of $600,000. Finally, the expert would have adjusted the total upwards to account for various lost conveniences resulting from the move to a smaller property.

¶31 Both the sales comparison approach and the cost approach fulfill the statutory command to determine value "by ascertaining the most probable price . . . that the property would bring if exposed for sale in the open market." § 12-1122(C). Instead of seeking the probable price of the condemned property on the open market according to its highest and best use, Royal Orchid's "use value" theory seeks to compensate real-world expenses. The price to purchase a different property and the costs to accommodate that property to Royal Orchid's particular needs might differ substantially from the most probable market price of the condemned property.

¶32 Because the "use value" theory is inconsistent with § 12-1122(C), the trial court did not abuse its discretion in limiting Royal Orchid's expert to the sales comparison and cost approaches. Notably, the cost approach resulted in a higher valuation than the precluded "use value" method, which also suggests that Royal Orchid was not prejudiced by the court's ruling.

Blight

¶33 Although not identified in the statement of the issues, the opening brief includes an argument that the trial court erred by precluding evidence that the property's value was diminished by "condemnation blight." In its pretrial ruling, the court concluded that evidence of blight was "not relevant." Nonetheless, the court instructed jurors to "disregard any decrease or increase in market value to the property before the acquisition which was caused by the Grant Road Widening Project or by the likelihood that the property would be acquired for the Grant Road Widening Project."

¶34 Condemnation of many properties in the same area over time "may help to prematurely blight the area and an owner whose lot is one of the last acquired is forced to absorb the declining market value which usually accompanies piecemeal condemnation." *Uvodich v. Ariz. Bd. of Regents*, 9 Ariz. App. 400, 405 (1969). In a condemnation action, therefore, "property may not be charged with a lesser or greater value at the time of taking, when the change in value is caused by the taking itself or by anticipation of appreciation or depreciation arising from the planned project." *City of Phoenix v. Clauss*, 177 Ariz. 566, 569 (App. 1994). Comparable sales that reflect an enhanced or diminished value brought about by the condemnation are not generally admissible to prove a property's fair market value. *Id.*; *City of Tucson v. Ruelas*, 19 Ariz. App. 530, 532 (1973).

¶35 Taken together, the trial court's rulings properly prevented the jury from considering "condemnation blight," while still allowing both sides to fully present their arguments about fair market value. Royal Orchid's expert estimated the property's value by using comparable sales, as well as by calculating the replacement cost and adjusting downward to account for depreciation. This calculation did not include any adjustment due to the impact of the Grant Road project. The city's expert estimated value by examining comparable property sales. None of the comparable sales that either party offered at trial to show the property's fair market value were part of the Grant Road expansion project.

¶36 None of the experts relied on comparisons or other data subject to blight resulting from the condemnation. It was within the trial court's discretion to preclude evidence of blight if its probative value was substantially outweighed by the dangers of wasting time, confusing the issues, or misleading the jury. *See* Ariz. R. Evid. 403. The court did not abuse its discretion.

Sales Data

¶37 Also omitted from the statement of the issues is Royal Orchid's argument that the trial court erred by precluding evidence of "comparable sales" that were not timely disclosed and did not form the basis for any expert's opinion about the fair market value of the property. Royal Orchid argues that it should have been permitted to reference these additional sales to rebut the city's expert. But the court reasoned that discovery was already closed and it would not be "fair to have either [party] be in a place where you're throwing new comparables out that, quite frankly, are going to be a year-and-a-half after the date of valuation."

¶38 A party may not use information not timely disclosed "[u]nless the court specifically finds that such failure caused no prejudice or orders otherwise for good cause." Ariz. R. Civ. P. 37(c)(1). A trial court has broad discretion in matters concerning disclosure and discovery. *Marquez v. Ortega*, 231 Ariz. 437, ¶ 14 (App. 2013). Again, the court also had discretion to preclude these additional comparable sales if it determined their probative value was outweighed by the dangers of unfair prejudice or wasting time. *See* Ariz. R. Evid. 403. Neither party's expert relied upon these sales to form their respective opinions. Allowing their introduction at trial would have prejudiced the city, because it would not have had an opportunity to investigate and prepare any rebuttal before a disclosure deadline that had already passed. *See Link v. Pima County*, 193 Ariz. 336, ¶¶ 10-11 (App. 1998) (trial court properly precluded a new expert opinion where the opposing party "had no opportunity to investigate fully and prepare rebuttal before the disclosure deadline because that had passed before the information was disclosed"). The court did not abuse its discretion.

Attorney Fees

¶39 Royal Orchid requests its attorney fees pursuant to Rule 37, Ariz. R. Civ. P., and Rule 21, Ariz. R. Civ. App. P. As noted, Royal Orchid does not develop any claim related to disclosure violations on appeal, much less any argument that such violations would warrant an award of attorney fees as a sanction. Because Royal Orchid is not the prevailing party on appeal, we deny its request for attorney fees. As the prevailing party, the city is entitled to its costs under A.R.S. § 12-341 upon its compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶40 For the reasons set forth above, we affirm.